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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,996	12/02/2003	Howard A. Kingsford	05918-243001 / VGCP No. 6	4509
26161 7590 01/23/2007 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3782	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/726,996

Applicant(s)

KINGSFORD ET AL.

Examiner

Jes F. Pascua

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-4, 6-18 and 20-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, lacks antecedent basis for an additional array of fastening elements permitting the first portion of the first base to be secured away from the opening to "vary the size of the opening". Although the original specification has support for an additional array of fastening elements permitting the first portion of the first base to be secured away from the opening, the original specification does not disclose the additional array of fastening elements being arranged in order to permit varying the size of the opening exposed to a user. Furthermore, the original specification fails to disclose that it was ever applicant's intention to render the size of the package opening variable. This is a new matter rejection.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1, 2, 5, 6, 18, 20 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 6 and 20, the functional recitation that the "additional array of fastening elements" permits "a first portion of the first base to be secured away from an opening of a package" is indefinite because it is not supported by recitation in the claim of sufficient structural relationship between the first, second and additional arrays of fastening elements to accomplish the function.

In claim 2, it is unclear whether the recitation "the other comprises hook-engageable fastening elements" refers to one of the first or second arrays of fastening elements or the "additional array of fastening elements" in the claim from which claim 2 depends.

In claim 5, line 12, "the opening in the substrate" lacks antecedence.

In claim 18, it is unclear whether the recitation "the other comprises hook-engageable fastening elements" refers to one of the first or second arrays of fastening elements or the "additional array of fastening elements" in the claim from which claim 18 depends.

In claim 24, lines 12 and 13, "the aperture" lacks antecedence.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b); by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 19 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,172,980 to Provost. See Figs. 4-7.

As a note, the loops (14A) meet the recitation "first fastening elements of the closure strip being engageable with an array of fastening elements on the fitment", since the claim does not specifically recite a fitment having an array of fastening elements in combination with the claimed package. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

7. Claims 1, 4, 6-8, 13-17, 19-22 and 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,964,399 to Ruben. See Figs. 21-23.

As a note, the flexible and resilient characteristics of the materials used to form the closure label of Ruben (see column 2, lines 11-14) would inherently render the closure label of Figs. 21-23 capable of permitting the first portion of the first base to be secured away from the opening to vary the size of the opening exposed to a user.

Regarding claim 19, the units (342) meet the recitation "first fastening elements of the closure strip being engageable with an array of fastening elements on the fitment", since the claim does not specifically recite a fitment having an array of fastening elements in combination with the claimed package. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

8. Claims 5 and 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,311,648 to Semons.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 9-10, 12 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruben.

Ruben discloses the claimed invention, as discussed above, except for the bag comprising gusseted portions. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the bag of Ruben with gusseted portions since it was known in the art that gusseted portions on bags increase the effective volumetric capacity of the bag.

Regarding the language "for application of the back faces of the closure strip and closure base" in claim 9, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Regarding claim 10, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

11. Claims 2, 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruben.

Ruben discloses the claimed invention except for the first and second arrays of fastening elements being U-shaped channel fastening elements instead of hook and loop fastening elements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the U-shaped channel fastening elements of Ruben with hook and loop fastening elements since the Examiner takes Official Notice of the equivalence U-shaped channel fastening elements and hook and loop fastening elements for their use in the fastener art and the selection of any of these

known equivalents to render the fastener of Ruben reclosable would be within the level of ordinary skill in the art.

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruben.

Ruben discloses the claimed invention except for the first portion of the closure strip being conical in shape. It would have been an obvious matter of design choice to make the first portion of the Ruben closure strip conical or of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results.

Response to Arguments

13. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new grounds of rejection.

Response to Summary of Interview Filed 01/04/2007

14. The Examiner acknowledges that a telephonic interview with applicant's representative, Michael R. Hamlin, took place on 01/04/2007, during which, proposed amendments to claim 19 and cancellation of claim 24 in order to place the claims in condition for allowance were made and agreed to. However, during preparation of the application for allowance, the Examiner became aware of certain disclosure and patentability issues that rendered the present claims unpatentable and provides the basis for this Final Office action. The Examiner contacted applicant's representative to inform him of these issues. Applicant's representative was further informed that no

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Examiner's amendment to claim 19 will be made, that claim 24 will not be cancelled and that an Office action on the merits of claims 1-24, filed 11/06/2006, will be forthcoming.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jes F. Pascua
Primary Examiner
Art Unit 3782

JFP